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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS.
ACTING DIRECTOR

BOARD OF PESTICIDES CONTROL

May 12, 2006

Colby Thomas Room, Hampton Inn
425 Kennedy Memorial Drive, Waterville

MINUTES

9:30 a.m.

- ☒ Chairperson Eckert called to the meeting to order at approximately 9:35 a.m. Jemison, Humphreys, Simonds, Eckert, Stevenson, Walton and Qualey were present.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the March 31, 2006 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Humphreys/Simonds: Motion made and seconded to approve the minutes

In Favor: Unanimous

3. Adoption of Chapter 26, Standards for Indoor Applications and Notification for All Occupied Buildings Except K – 12 Schools

Six people testified at a public hearing held on February 24, 2006 on the adoption of new Board rule Chapter 26 intended to promote the use of IPM and notification of occupants when making indoor pesticide applications. In addition, four written comments were received prior to the deadline on March 10, 2006. The Board reviewed the comments at their March 31, 2006 meeting and staff recommended changes that addressed several points brought out in the comment period. Members directed the staff to go forward with several revisions in preparing a final rule for adoption at their next meeting while electing not to exempt crack and crevice treatments from the notice requirements or to exempt FIFRA 25(b) products from the rule.

Presentation By: Henry Jennings

Acting Director

Action Needed Adoption of the Rule, Basis Statement and Response to Comments

Please note the Board will not entertain any questions or additional comment from persons in the audience during this or any future workshops needed to determine if the Board will be adopting this new rule.

- ☒ Jennings explained that the Board must approve three separate documents to adopt a rule, including the rule text, a basis statement and a response to comments. He suggested that members address each document separately. Jennings reviewed the changes to rule text from the previous proposal. A number of clarifying revisions had been made based on testimony. Members discussed the proposed January 1, 2007 effective date of the rule and agreed it seemed prudent to allow ample time for companies to make adjustments. Members pointed out that there were conflicting effective dates at the end of rule text, so they agreed to strike the statement indicating the effective date would be 60 days after adoption.

Stevenson inquired about the possibility of exempting certain FIFRA Section 25(b) exempt products from the notification requirements. Consensus was reached to vote on the rule as currently proposed and discuss potential revisions at a future date.

Members also reviewed the basis statement and response to comments. A typo was noted in the basis statement for correction prior to final adoption.

Humphreys/Simonds: Motion made and seconded to adopt the rule, basis statement and response to comments with the agreed upon technical changes.

In Favor: Humphreys, Simonds, Eckert, Jemison and Walton

Abstaining: Stevenson and Qualey

4. Workshop Session to Review Rule-Making Record on Proposed Amendments to Chapters 22, 28 & 40

Public hearings were held on March 30 and 31, 2006 on three citizen petitions to amend Chapters 22, 28 and 40 of the Board's rules. The petitions sought to prohibit aerial agricultural spraying, to rescind the \$20 fee for inclusion on the Pesticide Notification Registry, to require provision of MSD sheets when requested and to prohibit agricultural use of organophosphates. Thirty-one people testified in opposition to the proposed amendments and seventeen testified in favor at these public hearings. One hundred-seventy-one written comments in support of the amendments were received prior to the close of the comment period on April 14, 2006 while seventy-one written comments were received in opposition and two comments were neither for nor against. A transcript of the oral testimony and copies of the written comments will be provided to the Board for

review at the meeting. Due to the large volume of comments, the staff will attempt to identify major trends and seek guidance from the Board on how they wish to proceed.

Presentation By: Henry Jennings
Acting Director

Action Needed: Discussion and determination on how the members wish to proceed with the proposed amendments

Please note the Board will not entertain any questions or additional comment from persons in the audience during this or any future workshops needed to determine if the Board will be adopting these amendments.

- ☒ Members reviewed each of the three petitions separately in ascending order by rule chapter number. Eckert asked each member to offer their views on each separate petition. The petition to ban aerial spraying was discussed first. Members noted there were legitimate concerns expressed during the rule making process. There was consensus that additional protections are necessary, but growers and foresters had also made a compelling case that aerial spraying is the only practical approach in some instances. No Board member supported an outright ban on agricultural aerial spraying and no motion was made to adopt the proposed rule. However, members agreed the issue warrants further review and that consideration should be given to additional protections for nearby residents.

The Board next considered the proposed amendments to Chapter 28. Since there were two separate and distinct elements to the proposed amendments to Chapter 28, Assistant Attorney General Randlett advised the Board it would be acceptable to consider and vote on each element separately. Most members were opposed to removing the fee for inclusion on the outdoor notification registry, but supported the idea of creating a waiver mechanism in cases where the fee presented a financial hardship. No motion was made to adopt the removal of the fee for inclusion on the registry.

Some discussion ensued on whether it should be mandatory to provide MSDSs when notification is requested under Section one or two of Chapter 28. Board members noted that MSDSs are easy to obtain over the internet. Others objected to the notion MSDSs should be distributed regardless of whether they are requested.

Humphreys/Eckert: Moved and seconded adoption of the MSDS portion of petition on Chapter 28.

In Favor: Humphreys, Eckert and Walton

Opposed: Jemison, Simonds, Stevenson and Qualey

Finally, Board members reviewed the petition to ban agricultural use of organophosphates (OPs). Members agreed that OPs present unique risks and their use

should be minimized. They were mindful of recent Maine sales data that showed a sharp decline in the use of OPs in the last 15 years. Many members were hopeful that OPs would be phased out in the near future. However, several members opposed an outright ban because OPs are still the most effective products available for certain insect pests. In some instances, there are no viable alternatives. Jemison pointed out that resistance management relies on the availability of alternative chemistries.

Humphreys/Eckert: Moved and seconded adoption of the agricultural OP ban.

In Favor: Humphreys and Eckert

Opposed: Jemison, Simonds, Stevenson, Walton and Qualey

At the close of the discussion over the three petitions, Board members expressed the view that all three petitions raised important issues and that all three warranted further review by the Board as time allows.

5. ISK Biosciences Request for Special Local Needs Registration (24c) for use of Ranman Fungicide on Potatoes to Control Pink Rot

ISK Biosciences has requested a Special Local Needs (FIFRA Section 24c) Registration for Ranman Fungicide (cyazofamid) for application on potatoes in furrow at planting and as a lay-by application at hilling. The current federal label allows foliar application only. Research indicates the federal tolerance should not be exceeded due to the new use pattern. This request is supported by David Lambert, PhD, Associate Professor of Plant Pathology with the University of Maine. Field trials in Presque Isle indicate cyazofamid is the most effective fungicide option at this time.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/disapprove 2(c) registration request

- ☒ Members inquired what the total per acre use per year would be. Dave Lambert from the University of Maine stated there would only be one in-furrow application per year. There were also questions about the persistence and toxicity of the product, and whether cultural practices might be an alternative. Lambert addressed these questions and pointed out that the common two-year rotation was not sufficient to clear a field of the pathogen.

Jemison/Simonds: Moved and seconded approval of the FIFRA Section 24(c) registration request.

In Favor: Unanimous

6. Review of Public Law 2006, Chapter 553, An Act To Minimize the Risk to Maine's Marine Waters and Organisms Posed by the Application of Pesticides

The Maine Legislature passed and the Governor has signed Public Law 2006, Chapter 553 as emergency legislation. It was initiated in response to the Maine Lobsterman's Association concerns that pesticides used to control browntail moth may harm their industry. The law sunsets at the end of next March and imposes temporary buffer requirements as well as several other provisions including required drift monitoring and a risk/benefit assessment by the Board. A report is due to the Legislature's ACF committee no later than January 2, 2007.

Presentation By: Henry Jennings
Acting Director

Action Needed: Discussion and determination on how the members wish to proceed in addressing this legislative mandate

- ☒ Jennings briefly reviewed the legislation that passed imposing temporary restrictions on Browntail Moth spraying near marine waters. He also reviewed the mandates placed on the Board, which include conducting monitoring, evaluating the risks versus the benefits and submitting recommendations to the ACF committee by January 2, 2007. Jennings also pointed out that the risk/benefit analysis must include a consultation with the Lobster Conservancy, who had offered a different perspective on the molting patterns of juvenile lobsters. He suggested that an aggressive schedule would be prudent to ensure adequate time to develop recommendations for the ACF report. Eckert inquired and found there was consensus to hold a public information gathering meeting at the start of the next Board Meeting.

7. Enforcement Action Against S & T Property Maintenance of Hermon

The staff will detail the results of an anonymous complaint about herbicide spraying at the former Ames Store in Augusta. A staff investigation revealed that the company made two applications of Ortho Total Vegetation Killer to the area where the sidewalk abuts the parking lot and did not have anyone licensed. This action constitutes violations of the Board's statute and regulations requiring that a person be licensed as a commercial applicator in order to perform custom applications. To date, the company has failed to respond to a staff offer to negotiate a consent agreement.

Presentation By: Henry S. Jennings
Acting Director

Action Needed: Decision on appropriate enforcement response

- ☒ Jennings informed the Board that a settlement is in the works and asked that the matter be tabled pending the outcome of settlement negotiations.

Humphreys/Simonds: Moved and seconded to table the matter.

In Favor: Unanimous

8. Enforcement Action Against The Turf Doctor of Portland

The staff will detail the results of an investigation into a complaint filed by Judge David Cohen of Standish alleging The Turf Doctor made two unauthorized pesticide applications to his lawn during the spring of 2005. Staff findings supported the allegations but The Turf Doctor disagrees with these findings and is seeking further review.

Presentation By: Henry Jennings
Acting Director

Action Needed: Decision on Appropriate Enforcement Response

- ☒ Jennings informed the Board that Michael Russo, President of The Turf Doctor, had called and requested the matter be postponed as his entire family was sick.

Humphreys/Jemison: Moved and seconded that the matter be tabled.

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with Aaron Turner of Washburn

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case resulted when the office staff observed two recertification forms with identical hand writing had been submitted with forms from the Potato Conference. A staff investigation showed the handwriting on both forms matched Aaron Turner and the person listed on the other form admitted he had not attended the conference.

Presentation By: Henry S. Jennings
Acting Director

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings reminded Board members that they had considered similar consent agreements recently involving persons who had submitted recertification forms for someone who had not attended the meeting.

Simonds/Jemison: Moved and seconded that the consent agreement be approved.

In Favor: Jemison, Simonds, Humphreys, Eckert, Stevenson and Walton

Abstaining: Qualey

10. Consideration of Staff Negotiated Consent Agreement with The Lawn Dawg of Portland

This case is similar to the preceding agenda topic where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved a lawn care company that failed to make adequate adjustments in response to the extremely wet weather in the Portland area during the week of May 22, 2005. A staff investigation revealed 4.11 inches of precipitation were recorded at the Portland Jetport during this period. Continuing to apply pesticides during this wet period constitutes a violation of the Board's statute that make it unlawful to apply pesticides in a manner that is potentially harmful to the environment.

Presentation By: Henry S. Jennings
Acting Director

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings informed the Board that this would be the last consent agreement involving lawn care applications during the wet period in May of 2005. He pointed out that this case differed substantially from the other settlement in that it did appear the company had made some adjustments to their application pattern and the company had no violations during the previous four year period.

Jemison/Humphreys: Moved and seconded that the consent agreement be approved.

In Favor: Unanimous

11. Consideration of Staff Negotiated Consent Agreement with the Wal-Mart Store of Houlton

This case is similar to the preceding agenda topic where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves distribution of home use diazinon granules fourteen months after the final sell through date had passed. Distribution of this unregistered pesticide violated EPA's cancellation order and state and federal requirements prohibiting sales of unregistered pesticides.

Presentation By: Henry Jennings
Acting Director

Action Needed: Approve/disapprove the consent agreement negotiated by the staff.

- ☒ Jennings pointed out that diazinon had been illegal to sell for over a year and that several notices had gone to retailers prior to the sales deadline.

Jemison/Humphreys: Moved and seconded that the consent agreement be approved.

In Favor: Unanimous

12. Discussion of Annual Board Planning Session

The Board's annual planning session is scheduled for June 9. The staff will review the list of priority discretionary tasks from the previous year and solicit ideas for discussion at the upcoming one.

Presentation By: Henry Jennings
Acting Director

- ☒ Jennings reminded members that the annual planning session was scheduled for June 9, 2006. He asked if members had topics they wished to discuss and suggested that they email any additional ideas to him. Members suggested aerial spraying, organophosphates, indoor registry, waiver of the registry fee and occupational exposure data as topics to put on the list.

13. Review of the 2005 Statewide Ground Water Monitoring Report

The staff will review the results from the 2005 statewide ground water monitoring survey and the staff report.

Presentation By: Heather Jackson
Water Quality Specialist

Action Needed: Review/Acceptance of Report

- ☒ Jackson briefly reviewed the 2005 state-wide ground water monitoring project. She pointed out the results were similar to the previous two projects with about 10% of sites showing detectable pesticide residues. Most detections originated near blueberry areas and there were a few detections of corn herbicides.

Humphreys/Simonds: Moved and seconded to accept the report.

In Favor: Unanimous

14. Other Old or New Business

- a. Legislative Update – H. Jennings

- ☒ Jennings reviewed the status of Public Law 2006, Chapter 585 which raises the registration fee for pesticide products and Public Law 2006, Chapter 620 which recodified Title 7, the registration statute.
 - b. Variance Granted to the Maine DOT for the 2006 Roadside Vegetation Management Program – H. Jennings
 - ☒ Jennings alerted the Board that MDOT's variance permit had been renewed for 2006.
 - c. Amendments
 - ☒ Jennings informed Board members that amendments had been approved for the RWC variance and the Basham Tree variance.
 - d. Other ???
 - ☒ There was no other old or new business.
15. Schedule and Location of Future Meetings
- a. Date for the next meeting tentatively scheduled for June 16.
 - ☒ June 16 remained as the tentative date for next Board Meeting with Waterville as the preferred location.
 - b. Date and location for the following meeting.
 - ☒ July 21 was tentatively set for the following meeting targeted for the Brunswick/Freeport area.

16. Adjourn

- ☒ The meeting adjourned at approximately 12:50 p.m.

Respectfully submitted by Henry S. Jennings, Acting Director